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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Applicant: ANDERSON, Daniel

Application No.: 09/805,275

Filing Date: 03/13/2001

Title: EYEGLASS PROTECTION DEVICE

Group Art Unit/Examiner: 3728 / Troy G. Arnold III

Attorney Docket No.: ANDD100USA

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JUN 17 2004

TECHNOLOGY CENTER 3700

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DECLARATION OF JOEL SKINNER UNDER 37 C.F.R. 1.132

I, Joel Skinner, declare as follows:

1. I am the attorney of record in the above application.
2. I have read and understood the art of record.
3. I make this Declaration in support of the above-referenced application.
4. I have reviewed US Patent No. 5,593,024 to Seiler, which is of record in the application ("the Seiler patent").
5. I acquired and carefully reviewed a MARSOOPS® eyeglasses case and retainer sold by US Sport Optic of Novato, CA which is made under the Seiler patent. A copy of the package and "Eyeglass Instructions" is attached as **Exhibit 1**. The case appears to be substantially identical to the device shown in Figures 5-8 of the Seiler patent. Referring to attached **Photo 1**, I attempted to use the Marsoops case with a pair of eyeglasses in a manner proposed by the Examiner on page 3 of the office action. As shown in **Photo 2**, I first placed the glasses frame 10 (numbers used are equivalent to element designations in the Seiler patent for

convenience of comparison) through opening 32 into the pouch 30, and then inserted a bow 14 of the eyeglasses into an end or extension 34 of the case. This operation does not comply with the "Eyeglass Instruction" included with the case and appears to be substantially the opposite of the steps called for in such instruction. Next, I attempted to extend the end of the inserted bow 14 through the end or tube 36 of the end 34. No part of the bow 14 end would extend through the end 36, even with application of significant pressure which resulted in bending of the bow 14 of the glasses. Finally, as shown in **Photos2 and 3**, with the bow 14 placed as far as it could extend in end 34, I attempted to place opposite bow 13 through opening 32 to move it into opposite end 35. Opening 32 could only be stretched under significant force up to about one half the length of the bow 13, and thus the bow 13 could not be placed into end 35. As a result, attempting to use the case in contradistinction to the Instructions, the glasses 10 could not be retained or covered by the case.

6. Based on my investigation described above, in my opinion, the device disclosed in Figures 5-8 of the Seiler patent is limited in its mode or capability of operation, and will not operate as proposed by the Examiner on page 3 of the office action. Particularly:

- (1) the apertures 36 do not and cannot permit any part of the bow of a pair of eyeglasses to extend through it when a bow is inserted oppositely from the direction shown in Fig. 6 of the patent as proposed by the examiner in the office action, and certainly such apertures do not and cannot permit complete extension of the bow through such apertures; and
- (2) the embodiment of the retainer/cover shown in Figures 5-8 will not permit any reasonable use for retaining or covering eyeglasses when bows of eyeglasses are

inserted into item 35 or 36 opposite from the direction shown in Figure 6 as proposed by the examiner.

7. Taking the above investigation into consideration, the invention, as now claimed, is significantly structurally and functionally distinct from the disclosure of the Seiler patent.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that willful false statements may jeopardize the validity of the application or any patent issuing thereon.



Name: Joel Skinner

Date: 6-7-04

Rule 132 Declaration.doc

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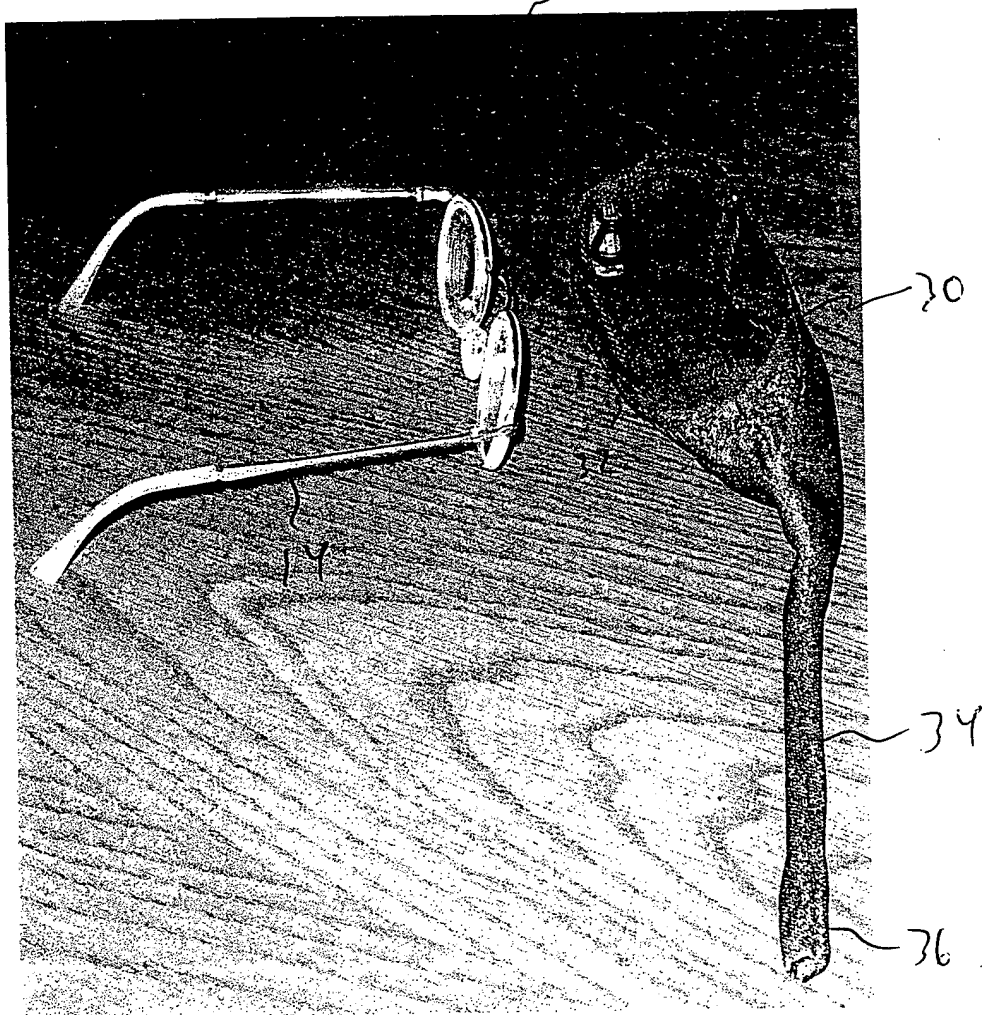


PHOTO 1

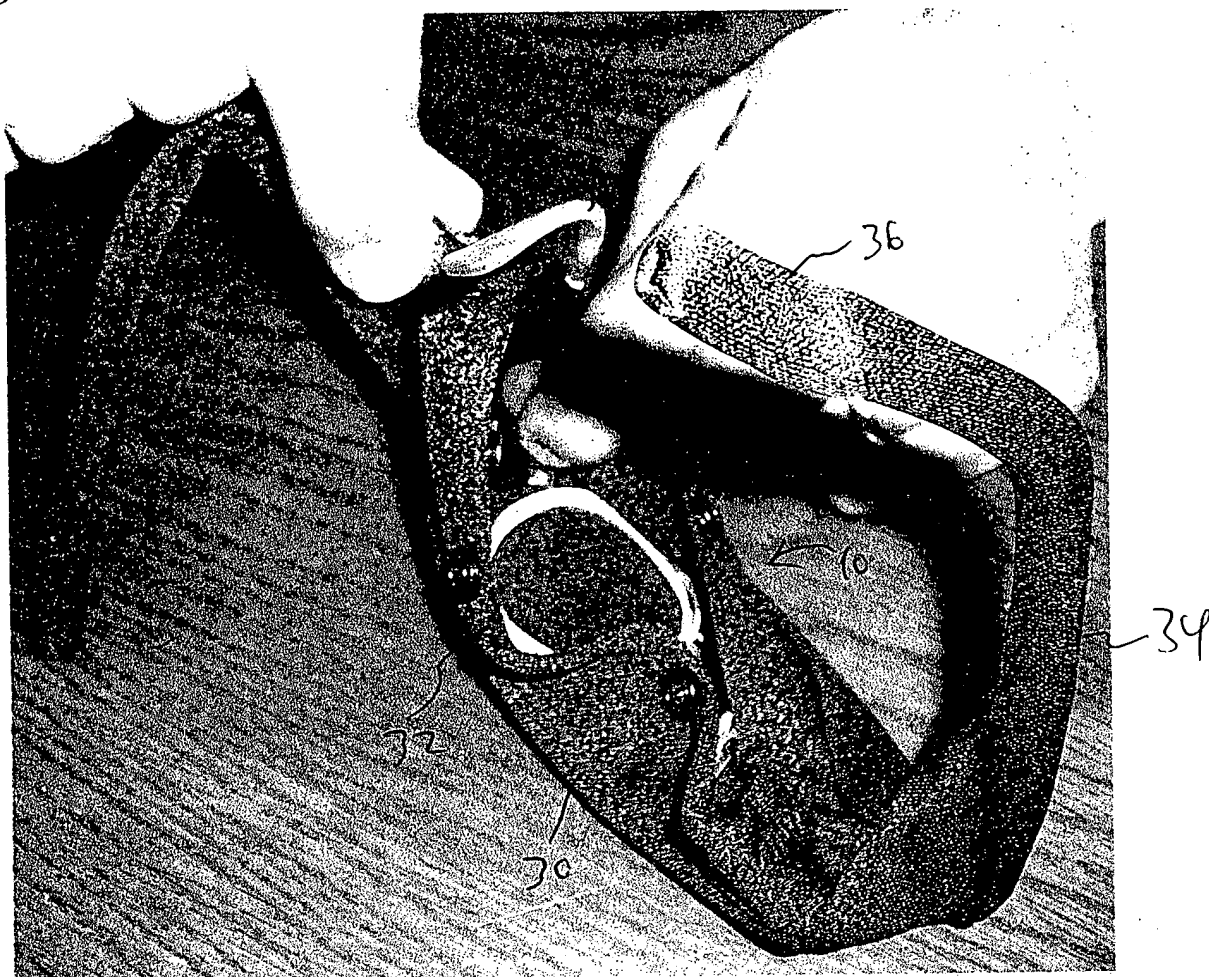


PHOTO 2

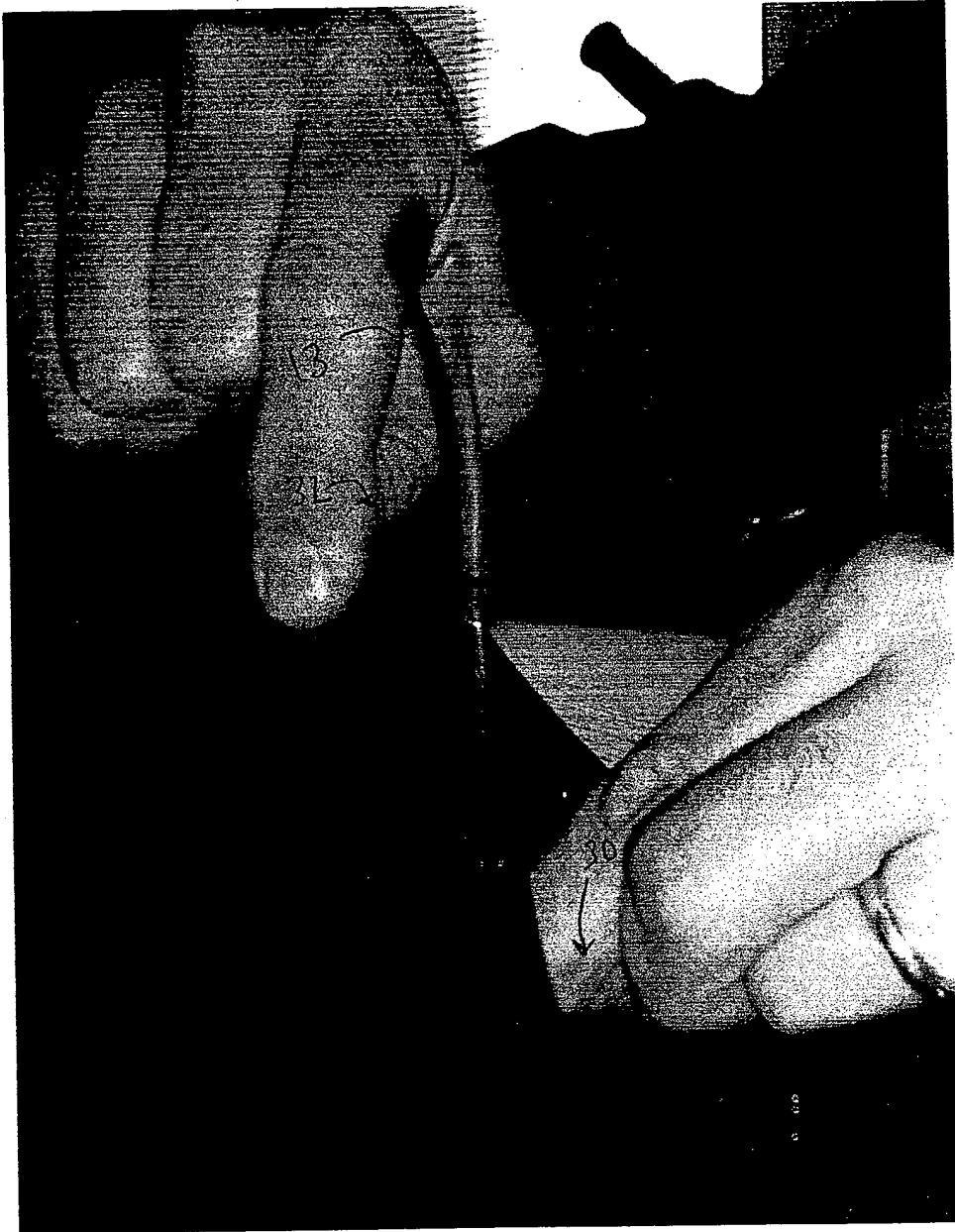


PHOTO 3